Supreme Court, U.S.
FILED

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Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

IN THE MATTER OF
DURAND DICKERSON
PETITIONER

V.

STATE OF KANSAS, EX REL
RODERICK L. BREMBY, SECRETARY OF THE
DEPARTMENT OF HEALTH AND ENVIRONMENT
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE KANSAS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

DURAND DICKERSON, Pro-Se
1514 10th Avenue
Leavenworth, Kansas 66048

QUESTION PRESENTED

1. The Kansas Supreme Court denial of Dickerson's Petition for Discretionary Review has decided a question on Section-10 Clause-1; Impairment of contract that conflicts with relevant decision of this Court.

2. The Kansas Supreme Court's denial of Dickerson's Petition for Discretionary Review has decided a question on the Fifth Amendment and the Fourteenth Amendment of the United States Constitution on retrospective or prospective application of legislation that conflicts with relevant decisions of this Court.

RULE 14.1 STATEMENT
LIST OF PARTIES

THE PARTIES TO THIS PROCEEDING ARE:

DURAND DICKERSON	PETITIONER
STATE OF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT	RESPONDENT

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BRIEF OF PETITIONER

OPINIONS BELOW

CITATION OF THE REPORT OF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS, THE KANSAS COURT OF APPEALS, AND THE KANSAS SUPREME COURT

The Hearing Officer's Report, Initial and Final Order is that Dickerson owed $5,000.00 fine and cleanup fees, and that $39,216.38 was owed as a recoupment, (Appendix A).

The Shawnee County District Court Memorandum Opinion and Entry of Judgment (Appendix B) granted Kansas Department of Health and Environment $39, 216.38 recoupment of grant monies.

The Kansas Court of Appeals decision (Appendix C) affirmed the District Court Opinion.

The Kansas Supreme Court (Appendix D), denied Dickerson's Petition for Discretionary Review.

STATEMENT OF BASIS OF JURISDICTION

The denial by the Kansas Supreme Court of Dickerson's Petition for Discretionary Review was entered on March 30, 2004.

This Court has jurisdiction pursuant to 28 U.S.C. 1257(a) to hear by Writ of Certiorari the judgment of the State of Kansas that is contrary to the Constitution and in violation of Dickerson's privilege under the Constitution.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUES, ORDINANCES, AND REGULATION INVOLVED IN THIS PRESENT CASE.

The Fifth Amendment of the United States Constitution (Appendix-E) says in pertinent part " ..... nor be deprived of ..... or property, without due process of law."

The Fourteenth Amendment of the United States Constitution (Appendix-F) in pertinent part Section-1 says "..... no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ..... nor shall any State deprive any person of ..... property without due process of law ..... nor deny to any person within its' jurisdiction the equal protection of the laws."

The United States Constitution Section-10, Clause-1 states: "..... shall pass no law to impairment of contracts ....." (Appendix-G).

STATEMENT OF THE CASE

Dickerson was served with a "Notice of Hearing"

before the Kansas Department of Health and Environment of which Dickerson objected to jurisdiction to hear the $5,000.00 fine and the $39,216.38 recoupment issue (Appendix-H).

During the hearing of the Hearing Officer, Dickerson objected to the jurisdiction of the Hearing Officer to hear the $39,216.38 recoupment of grant money (Appendix-I).

Dickerson appealed the Final Order to the Shawnee County District Court. On July 11, 2002 the District Court issued a Memorandum Opinion and Order granting the $5,000.00 fine and ordering further briefing on the recoupment of the grant money (Appendix-J). Wherein Dickerson argued jurisdiction of the Hearing Officer to hear the grant money contract and the retrospective application of K.S.A. 65-3415 passed into law on July 1, 200 by the Kansas Legislature (Appendix-K).

On December 5, 2002 the Shawnee County District Court issued its Memorandum Opinion and Entry of Judgment (Appendix-B, page 5) stated on the contract, Dickerson's due process and jurisdictional issues decided, " .... adjudicatory procedure used was lawful and the result factually and legally appropriate" and it cites its decision on January 4, 2001 (Appendix-L). The decision of the District Court cites no facts or law that the Kansas Legislature can impair a contract by prospectively passing a law and then applying it retrospectively, or that Dickerson's due process was not

violated.

Dickerson continued his quest for justice on direct appeal to the Kansas Court of Appeals (Appendix-M). In his brief in the Court of Appeals page (i) Arguments one through five. From this point on (Appendix-C and D), Dickerson's impairment of contract and due process rights argument was ignored as there is no decision for this Court to review.

Therefore, the Federal Questions were timely and properly raised in the Kansas Courts, and this Court now has jurisdiction to review the judgment on a Writ of Certiorari.

ARGUMENT

THE KANSAS SUPREME COURT DENIAL OF DICKERSON PETITION FOR DISCRETIONARY REVIEW OF HIS ARGUMENT OF THE PROSPECTIVE PASSAGE BY THE KANSAS LEGISLATURE OF K.S.A. 65-3415 ON JULY 1, 2000 AND ITS RETROSPECTIVE APPLICATION TO DICKERSONS' CONTRACT IMPAIRED IT AND VIOLATED HIS DUE PROCESS RIGHTS RUNS CONTRARY TO WELL SETTLED PRINCIPLES OF CONSTITUTIONAL LAW.

Under the protection of the provision of the Federal Constitution quotes that "no State shall by law impair the obligation of contracts" applies to Dickersons' case,

his contract which is dated April 5, 1996 (Appendix-N) was improvidently impaired by the Kansas Legislatures passage of K.S.A. 65-3415 (Appendix-K) on July 1, 2000 is beyond the reach of the State of Kansas (Appendix-G). Supervision over either the Legislative or Judicial actions of the states is in no case permissible **except** as to matters by the Constitution specifically authorized or delegated to the United States.[1]

Dickerson's due process under the Fifth and Fourteenth Amendments violations has never been addressed by the State Courts of Kansas. This is specifically authorized by the Constitution and permissible for this Court to adjudicate.

Dickerson's contract being impaired by the prospective passage of K.S.A.65-3415 on July , 2000 some four years after the signing of the contract, and then the retrospective application to Dickerson's contract violated Section-10 Clause-1 of the United States Constitution and violated Dickerson's Fifth and Fourteenth Amendment rights which gives this Court permissible authority which is authorized and delegated by the Constitution to this Court to adjudicate.[2]

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[1] *Erie R. Co. V. Tompkins,* 304 US 64, 78-79 (1938)

2. *Alden v. Maine,* 527 US 706, 754 (1999)

It is undisputed that Dickerson had a contract for his grant money (Appendix-N). When it was accepted and acted upon, it created a contract with the State of Kansas which was protected under Section-10, Article-1 of the United States Constitution.[3]

Dickerson has a contract with the State of Kansas and that contract under the Constitution of the United States and under decisions of this Court cannot be impaired by subsequent legislation. Under the contract Dickerson had for the grant money he received, there was no provision for the return of grant money. This provision was added some four (4) years later in the repeal of K.S.A. 65-3415 by the Kansas legislature.

At the time of the Initial Hearing dated April 13, 2000, Dickerson argued as to the jurisdiction of the Hearing Officer to hear and rule upon the recoupment of grant funds (Appendix-I). The statue at the time of the grant contract did not allow for Kansas Department of Health and Environment to recoup grant money (Appendix-O). The statue as applied to the grant contract allowed for the county or district attorney to bring action in the District Court.

The Kansas legislature rules are that all legislation when passed shall be prospective unless stated in the legislation (Appendix-O). Here the legislation intent was for it to take effect on July 1, 2000 as evidenced by

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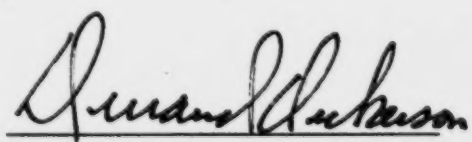
[3] *Washington University v. Rouse*, 75 US 439

the legislature statement (Appendix-K). The retrospective application to Dickerson of K.S.A. 65-3415 violated his Fifth and Fourteenth Amendment rights to due process and deprives Dickerson of his property.

This Court has stated that supervening law is always grounds for the dissolution of contractual obligation.[4] Even if the Kansas legislature had passed new legislation, than the grant contract was dissolved and the Hearing Officer had no jurisdiction to hear the case under any circumstances. The decisions by the Hearing Officer, the District Court of Shawnee County, Kansas, the Kansas Court of Appeals, and the Kansas Supreme Court was arbitrary and without foundation in law.

The grant of Certiorari is therefore warranted so this Court can further define the boundaries of due process. If fair procedures are required no matter what power is invoked, the Kansas Supreme Court wrongly endorsed the trial Court's semantic dodge in this case; absent guidance, other Courts may conclude that they too can escape the reach of due process simply by invoking some other pithy statement.



Durand Dickerson

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[4] *Eastern Associated Coal v. UMW*, 531 US 57, 69 (2000), Scalia Concurring Opinion quoting Restatement (Second) of Contracts @ 264 (1979)